

APPEAL NO. 041249
FILED JULY 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 29, 2004. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable left shoulder injury on _____; (2) that the claimant had "continuous good cause" for not timely reporting the injury to the employer pursuant to Section 409.002; and (3) that the claimant had disability from December 12, 2003, through the date of the CCH, but did not have disability from August 5 through December 11, 2003.

The appellant (carrier) appealed the adverse determinations basically on sufficiency of the evidence grounds. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, an auto parts worker, testified that she felt a "cinching" in her left shoulder lifting a heavy tote bag of auto parts on _____. It is undisputed that the claimant had received some treatment for her shoulder prior to _____, and had been told she had arthritis. The claimant testified that she believed her left shoulder pain was due to arthritis. The claimant was eventually diagnosed with a left shoulder rotator cuff tear on October 23, 2003, after having an MRI on October 7, 2003. The claimant had been off work for another nonwork-related condition between August 11 and September 28, 2003. The carrier on appeal complains that the hearing officer "chose to ignore the testimony, medical evidence, and arguments," made by the carrier during a dialogue in the carrier's closing argument. Our review of the record and the hearing officer's decision is that the hearing officer simply rejected the carrier's version of the events and that the claimant's good cause belief that her problem was arthritis ceased in a conversation with her doctor on September 18, 2003.

The questions of whether the claimant sustained an injury, whether and/or when there was any good cause for failing to timely report that injury, and whether the claimant had disability were questions of fact for the hearing officer to resolve. As the finder of fact, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175,

176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH STREET PAUL
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica L. Ruberto
Appeals Judge